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March 22, 2010

Wendy Cheung  
U. S. Environmental Protection Agency, Region 8  
Ground Water Program, 8P-W-GW  
1595 Wynkoop Street  
Denver, CO, 80202

Re: Response to Comments from Aurora Water Concerning Deep-well  
Injection Permit Application for East Cherry Creek Valley Water and  
Sanitation District (ECCV)

Dear Ms. Cheung:

This letter responds to the March 5, 2010 letter from Aurora Water regarding the application for three Class I underground injection wells in Adams County, Colorado, by East Cherry Creek Valley Water and Sanitation District (ECCV).

Aurora's comments do not identify any potential harm to drinking water and are therefore outside the scope of EPA's consideration for purposes of granting ECCV's permit. Aurora's stated concerns regarding potential seismic activity induced by the planned injection of reverse osmosis brine also are not substantiated. For these reasons, as detailed below, Aurora's comments do not provide a basis for EPA to deny or modify the ECCV draft permit

1. Aurora's comments do not assert harm to underground sources of drinking water (USWDs). ECCV has applied for a permit under EPA's Underground Injection Control (UIC) Program, as authorized by the federal Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.* (SWDA). The UIC permit requirements are intended to safeguard the quality of USWDs by protecting USWDs from contamination by injected waste. *See, e.g.,* 42 U.S.C. § 300h(b)(1), (d)(2); 40 C.F.R. § 144.1(g); *see also Phillips Petroleum Co. v. U.S. E.P.A.*, 803 F.2d 545, 547-48 (10<sup>th</sup> Cir. 1986).

Aurora's comments do not express concerns with the impact of ECCV's proposed wells on USWDs. Instead, the comments raise the specter that ECCV's wells might

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somehow trigger seismic activity that would “affect” Aurora’s Prairie Waters Project facilities. Aurora does not specify what kind of “effect” hypothetical seismic activity might have on its property. Whatever the effect, EPA would only have authority to seek to prevent it via a Class I well permit if it were adverse to USDWs. The potential harm Aurora hypothesizes is not to USDWs and therefore is outside the auspices of EPA’s review of ECCV’s Class I permit application.

2. Aurora requests relief that is outside EPA’s authority to require under the UIC program.

ECCV’s permit application and Statement of Basis address all statutory and regulatory requirements for a Class I well. Aurora does not contest this fact. Instead, Aurora requests that EPA require ECCV to “provide a detailed geological and geophysical analysis that will demonstrate there is no chance that their brine waste injection program will cause any seismic disturbances.” (Aurora’s Comments at 2.) Such an analysis is not required under the regulations regarding Class I well permit applications. *See* 40 C.F.R. § 146.14. EPA would therefore be exceeding its authority if it imposed the requested requirement.

3. Aurora’s procedural comments are without basis.

a. Public notice was adequate. Aurora mistakenly asserts that the lack of publication date and comment deadline on the public notice document rendered the public notice of ECCV’s permit inadequate. Although the public notice document on EPA’s website is not dated, public notice was published in the Brighton Blade newspaper, and the notice requested comments “within 30 days of this notice.” The public notice alerted the public that EPA planned to grant the permit with proposed requirements and conditions and solicited comments on these requirements and conditions. This notice was adequate under the regulations. *See* 40 C.F.R. 124.10.

b. EPA did not act arbitrarily or capriciously in extending the comment period for two weeks rather than one month. Aurora apparently requested a one-month extension of the comment period, which EPA apparently denied. As we understand it, EPA did extend the comment period by two weeks, however. EPA was not obliged to give Aurora any extension of time to comment. *See, e.g., Philips Petroleum*, 803 F.2d at 558-59 (in the context of SWDA rulemaking regarding UIC program on Indian lands, EPA did not abuse its discretion in denying extension of 45 day comment period). EPA’s two-week extension was in fact generous in light of the fact that Aurora’s request was for more time to review “all of the seismic literature and prepare precise comments” on that issue. (Aurora’s Comments at 1.) EPA was justified in denying Aurora an extra month to prepare comments that do not relate to the harm that the ECCV Class I permits are designed to prevent.

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c. The description of the well locations is adequate. Aurora complains that the legal description in the Statement of Basis for one of ECCV's planned well locations may contain a mistake. If this is true, ECCV will correct the mistake. In any event, such an error would not prevent a potential commenter (and has not prevented Aurora) from preparing comments on the permit. Also, the language in the Statement of Basis regarding the alternate location of the third well and the fact that ECCV seeks a permit for three wells, not four, clearly indicates the number of wells for which ECCV seeks a permit.

d. The Statement of Basis and Draft Permit are clear that the permit term is ten years.

e. ECCV's submitted financial statement fulfills the requirements of the regulatory financial responsibility requirements. Aurora "urges EPA and ECCV to consider the state of the law" regarding financial responsibility, citing to an unpublished law review article posted on the author's personal website. Federal regulation addresses the financial responsibility requirements for UIC program permits, and states that the permittee "is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director." 40 C.F.R. § 144.2(7). The unpublished law review article cited by Aurora does not elaborate on or even address these federal regulatory requirements, but instead correctly notes that no Colorado state statutes or regulations explicitly prohibit inducing seismicity or seek to control it. The law review manuscript then explores state statutes that could be used to control the induction of seismicity and various common law theories by which an injured party could seek relief. The cited manuscript does not address financial responsibility requirements for UIC permits.

As is discussed more thoroughly in the attached technical response by ECCV's consultant geologist to Aurora's comments, Aurora does not state a particularized or realistic threat to its property from ECCV's proposed permit, nor does it state any potential harm to USDWs or problems with the proposed terms and conditions of the draft permit. No EPA response is required to Aurora's comments.

\* \* \*

In conclusion, Aurora does not identify any potential harm to drinking water and its comments are therefore outside the scope of appropriate comments for the proposed deep well injection permit. Aurora's procedural comments are groundless, and its stated concerns

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regarding potential seismic activity are not substantiated. Consequently, EPA should proceed to issue the permit to ECCV as requested.

Thank you in advance for your consideration of this matter. Please call Kipp Scott or me if you have any questions or concerns.

Sincerely yours

 Olivia Lucas for

Brian M. Nazarene

cc: With Enclosures to:  
Dave Kaunisto  
Kipp Scott  
Scott Mefford  
Gordon Meurer  
David Hahn, Esq.  
William B. Tourtillott, Esq.  
Patrick O'Brien

Enclosures

# APPROVED UIC WELL LOCATIONS

